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MACY'S WEST STORES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

YULIE NAREZ, as an individual  
and on behalf of all others  
similarly situated,

Plaintiffs,

v.

MACY'S WEST STORES, INC. DBA  
MACY'S, an Ohio corporation;  
and DOES 1 - 50, inclusive,

Defendants.

Case No.: 5:16-cv-00936-LHK

**DECLARATION OF MATTHEW MELODY IN  
SUPPORT OF DEFENDANT'S MOTION TO  
COMPEL ARBITRATION**

I, Matthew Melody, hereby declare:

1. I am employed as Senior Manager, Associate Relations - Solutions InSTORE, for Macy's, Inc. Macy's, Inc. is the parent company of the wholly-owned subsidiary, Macy's Retail Holdings, Inc. ("MRHI"), which operates the department stores in the United States that are known as "Macy's." MRHI operates the stores in California through its wholly owned subsidiary Macy's West Stores,

1 Inc. ("MWSI"). The Macy's store where Plaintiff Yulie Narez was  
2 employed was operated by MWSI.

3 2. I submit this declaration in support of Defendants'  
4 Motion to Compel Arbitration and Stay Civil Proceedings. I am over  
5 the age of eighteen years and competent to testify herein based  
6 upon my personal knowledge. If called upon to do so, I could and  
7 would testify to these facts.  
8

9 3. In my capacity as Senior Manager, I am responsible for  
10 the management and administration of Macy's Solutions InSTORE Early  
11 Dispute Resolution Program ("Solutions InSTORE Program" or  
12 "Program"). My duties include responding to inquiries arising out  
13 of the introduction and implementation of the Program and  
14 determining whether a particular employee chose to participate in  
15 Step 4 of the Program (binding arbitration). I supervise the  
16 Solutions InSTORE Program and the employees whose sole job is to  
17 administer the Solutions InSTORE Program. I am also familiar with  
18 the history and implementation of the Solutions InSTORE Program  
19 before the time I became responsible for it through my  
20 communication with former and current employees of the Office of  
21 Solutions InSTORE and my personal review and analysis of the  
22 historical documentation and other records of the Office of  
23 Solutions InSTORE for which I serve as the custodian of records.  
24 These records are maintained in the ordinary course of business.  
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1 The employees in the Office of Solutions InSTORE, including myself,  
2 use and rely upon these documents in the performance of our job  
3 duties.

4 **The Solutions InSTORE Program.**

5  
6 4. In 2003, at great effort and expense, Macy's, Inc., then  
7 known as Federated Department Stores, Inc., developed and  
8 implemented Solutions InSTORE, which is a comprehensive early  
9 dispute resolution program. The purpose of the Solutions InSTORE  
10 Program is to surface and resolve disputes as early and fairly as  
11 possible. With certain exceptions not pertinent here, the Solutions  
12 InSTORE Program applies to employees of all subsidiaries and  
13 divisions of Macy's, Inc.  
14

15 5. To support the Solutions InSTORE Program, Macy's  
16 established an Office of Solutions InSTORE within its Employee  
17 Relations Department in Cincinnati, Ohio.  
18

19 6. Since its inception, the Office of Solutions InSTORE has  
20 been staffed with employees whose sole responsibilities are to  
21 administer the Solutions InSTORE Program. Their responsibilities  
22 include: (a) managing associate calls to the toll-free Solutions  
23 InSTORE phone number and email address; (b) conducting  
24 investigations; (c) managing administration associated with program  
25 execution; and (d) training professionals throughout the company on  
26 topics such as facilitating Step 3 Peer Review Panels, managing  
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1 investigations, and facilitating early resolution. The Office of  
2 Solutions InSTORE has its own dedicated budget from which the  
3 Program is administered.

4  
5 7. The Solutions InSTORE Program (including the initial Plan  
6 Document) was first rolled out in Fall 2003, with an effective date  
7 of January 1, 2004, to all then current, non-unionized employees of  
8 all Macy's-related companies, including those employed at Macy's  
9 stores located in California. The Plan Document was subsequently  
10 revised and implemented effective January 1, 2007, and most  
11 recently in 2014, with the current version of the Solutions InSTORE  
12 Program effective June 1, 2014. This declaration will discuss the  
13 2007 version of the Plan Document since that is the relevant Plan  
14 Document for this case.  
15

16  
17 8. The Solutions InSTORE Program contains four separate  
18 steps for resolution of work-related problems. By accepting and  
19 continuing their employment with Macy's, all employees are covered  
20 by Steps 1 through 4 of the Solutions InSTORE Program. The final  
21 step is binding arbitration—unless the employee has chosen not to  
22 participate in the arbitration portion of the Solutions InSTORE  
23 Program. The four steps are explained in depth in the Solutions  
24 InSTORE Program Plan Document ("Plan Document"). A true and  
25 correct copy of the Plan Document effective January 1, 2007 and in  
26 force when Ms. Narez was hired is attached to this declaration as  
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1 **Exhibit A.**

2 9. The following is a summary of the Solutions InSTORE  
3 Program's four steps:

4 **Step 1:** The Solutions InSTORE Program begins with "Open  
5 Door." Employees are encouraged to bring their concerns to a  
6 supervisor or local management team member (e.g., Store or  
7 Facility Manager, Human Resources Representative) for  
8 discussion and resolution.  
9

10 **Step 2:** In Step 2, the employee submits a written request for  
11 review to the Manager of Step 2 claims where it is assigned to  
12 a Human Resources professional that was not previously  
13 involved in the underlying decision for investigation and  
14 reviewed with an Associate Relations Vice President or Senior  
15 Vice President of Human Resources.  
16

17 **Step 3:** In Step 3, if the claim involves legally protected  
18 rights, the request is directed to the Office of Solutions  
19 InSTORE in Cincinnati, Ohio. If the dispute involves a claim  
20 related to layoff, harassment, discrimination, reduction in  
21 force, or other alleged statutory violation, a trained  
22 professional investigates it thoroughly and objectively.  
23 Other disputes, including disputes over termination and final  
24 warnings, may be submitted to a Peer Review Panel at the  
25 employee's option. In either case, the dispute is decided by  
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1 the Peer Review Panel or the Office of Solutions InSTORE and  
2 not by the employee's local/divisional management.

3 **Step 4:** The fourth and final step of the Solutions InSTORE  
4 Program is binding arbitration, which is administered by the  
5 American Arbitration Association ("AAA"). Arbitration under  
6 the Solutions InSTORE Program is a voluntary term and  
7 condition of employment in that all employees are given the  
8 opportunity to opt out of arbitration by completing a one-page  
9 form and mailing it to the Office of Solutions InSTORE in Ohio  
10 within a prescribed time period. If the employee does not  
11 submit the opt-out form within the prescribed time period, the  
12 employee agrees to arbitration as a term and condition of  
13 continued employment. Employees may agree to employment with  
14 or without Step 4-Arbitration. While employees are encouraged  
15 to go through Steps 1 through 3 before proceeding to Step 4-  
16 Arbitration, there is no administrative or other requirement  
17 that they do so. Some former and current employees choose not  
18 to go through Steps 1 through 3 before proceeding to Step 4-  
19 Arbitration.  
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24 10. Employees hired after the initial implementation of the  
25 Solutions InSTORE Program are given thirty (30) days from their  
26 date of hire to opt out of Step 4-Arbitration.  
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1        11. Under the terms of the Solutions InSTORE Program, Macy's  
2 is bound by the decisions made at any of the first three steps of  
3 the Solutions InSTORE Program—even those not in Macy's favor. In  
4 contrast, the employee may appeal any decision made at these steps.  
5 In short, the employee drives the process.  
6

7        12. The employee's choice of whether to opt out of Step 4-  
8 Arbitration is confidential. Macy's intentionally designed the  
9 opt-out procedure so that the employee's local management is  
10 unaware of an employee's election. All employees across the  
11 country are asked to mail the opt-out Election Forms to Ohio so  
12 that no one at the Macy's stores or other work locations has access  
13 to individual election information, including returned forms. Only  
14 a select few Company employees have access to the returned opt-out  
15 Election Forms and the portion of the electronic database  
16 containing an employee's opt-out status. An employee's opt-out  
17 status is accessed only when that information becomes relevant to  
18 handling an employee's claim.  
19  
20

21        13. An employee's decision to accept or opt out of binding  
22 arbitration has no detrimental effect on her employment. Macy's  
23 strictly prohibits retaliation against employees who use or opt out  
24 of Step 4 - Arbitration of the Solutions InSTORE Program. Such  
25 retaliation would seriously undermine the Solutions InSTORE  
26 Program's core purpose, which is to surface and resolve disputes  
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1 quickly and fairly. Macy's communicates this no retaliation policy  
2 to its employees through the Solutions InSTORE Program information  
3 given to employees.

4  
5 14. If an employee chooses to be covered by Step 4-  
6 Arbitration, the agreement covers most employment-related claims  
7 asserted either by the employee or by Macy's, whether the claims  
8 arise under federal, state, or local law. **Ex. A, Plan Document,**  
9 **pp. 6-7.** Certain claims are not subject to arbitration, such as  
10 those brought under an employee pension or benefit plan, or those  
11 under the National Labor Relations Act. **Ex. A, p. 7.** If the  
12 employee chooses to be covered by arbitration, Macy's in turn is  
13 required to resolve any employment-related disputes with the  
14 employee by arbitration as well. **Ex. A, p. 6.**

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16  
17 15. Other aspects of Step 4-Arbitration of the Solutions  
18 InSTORE Program include:

19 (a) The employee bears minimal costs equal to one day's wage,  
20 not to exceed a maximum of \$125 for a filing fee, and may  
21 pay nothing if the arbitrator so orders (**Ex. A, pp. 14-**  
22 **15**);

23  
24 (b) Macy's will have an attorney present at the arbitration  
25 only if the employee decides to have an attorney present  
26 at the arbitration (**Ex. A, p. 9**);

- 1 (c) Macy's will reimburse the employee's legal fees up to  
2 \$2,500 each year (calculated on a continuously rolling  
3 12-month period); if the employee elects not to be  
4 represented by counsel, Macy's will reimburse the  
5 employee for incidental costs up to \$500 (also calculated  
6 on a rolling 12-month period) (Ex. A, p. 15);
- 7  
8 (d) Discovery is permitted and includes voluntary document  
9 disclosures by each party, three depositions per side,  
10 twenty interrogatories (each of which may include a  
11 document request), and a provision allowing the  
12 arbitrator to award more discovery if the relevant  
13 standard is met (Ex. A, pp. 9-10);
- 14  
15 (e) The arbitrator, jointly selected by both Macy's and the  
16 employee, has the same power and authority as a judge to  
17 grant any ultimate relief under applicable law, including  
18 attorney's fees and costs; and the applicable statutes of  
19 limitation are the same as those that would apply in  
20 court (Ex. A, pp. 8-9, 15);
- 21  
22 (f) The AAA administers the arbitration under the Solutions  
23 InSTORE Program Plan Document rules. If necessary, the  
24 AAA Employment Arbitration Rules and Mediation Procedures  
25 may be used to supplement the Plan Document rules (Ex. A,  
26 p. 6); and  
27  
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1 (g) The Solutions InSTORE Program also requires an arbitrator  
2 to submit a written decision specifying any remedies  
3 found to be appropriate. The arbitrator also may include  
4 findings of fact and conclusions of law in any decision.  
5  
6 (Ex. A p. 14).

7 Processing of Election Forms.

8 16. The PeopleSoft human resource system is a software  
9 database that includes employment information such as an employee's  
10 identification number, address, job code, title, location, dates of  
11 employment, and other items. Macy's customarily relies on the  
12 accuracy of the PeopleSoft human resource system and the  
13 information contained therein for the administration and resolution  
14 of issues related to its employee population. Access to the area  
15 of the PeopleSoft human resource system in which the employee's  
16 opt-out election is recorded is limited to the staff of the Office  
17 of Solutions InSTORE and to a very limited number of individuals  
18 responsible for data input and system maintenance.  
19  
20

21 17. The Office of Solutions InSTORE has regular mail  
22 collection procedures designed to ensure that all opt-out Election  
23 Forms mailed to the Ohio address as instructed are recorded and  
24 accounted for. Employees of Macy's Credit and Customer Services,  
25 Inc. ("MCCS"), a subsidiary of Macy's, Inc., receives the Election  
26 Forms, opens and date-stamps them. After reviewing for  
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1 completeness, MCCS records the employee's opt-out status into the  
2 PeopleSoft human resource system, a database regularly used by the  
3 Office of Solutions InSTORE to verify the opt-out status. The  
4 electronic information on the PeopleSoft database is maintained in  
5 the ordinary course of business and is accessed and used regularly  
6 by the Office of Solutions InSTORE in implementing and enforcing  
7 the Solutions InSTORE Program.

9 18. MCCS sends the Election Forms to the Office of Solutions  
10 InSTORE where they are stored in file cabinets and organized by the  
11 Social Security number of the employees who have chosen to opt out  
12 of Step 4-Arbitration. These records are maintained in the  
13 ordinary course of business. Office of Solutions InSTORE  
14 personnel, including myself, rely upon these records in the  
15 performance of our job duties.

17 **Ms. Narez's Opportunity to Opt-Out of Step 4-Arbitration.**

19 19. A review of the PeopleSoft human resources system reveals  
20 that Ms. Narez was hired in November 2013 at Macy's Salinas,  
21 California store where she is currently employed.

22 20. Macy's and each of its subsidiaries and divisions take  
23 multiple measures to ensure their newly hired employees (i.e.,  
24 those hired after the Solutions InSTORE Program was initially  
25 rolled out in 2003, hereafter "new hires") are aware of the  
26 Solutions InSTORE Program and are aware that, if they do not opt  
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28

1 out of Step 4-Arbitration within thirty (30) days of their hire,  
2 they agree to arbitration. For example, each of the following  
3 educates employees about the Solutions InSTORE Program:

- 4 • The Solutions InSTORE Plan Document (Ex. A);
- 5 • The Solutions InSTORE New Hire Brochure (Ex. B);
- 6 • The Solutions InSTORE opt-out Election Form (Ex. C);
- 7 • The Solutions InSTORE poster used in Macy's stores (Ex.  
8 D);
- 9 • The Solutions InSTORE website  
10 ([www.employeeconnection.net/solutionsinstore](http://www.employeeconnection.net/solutionsinstore));
- 11 • The Solutions InSTORE New Hire Acknowledgement (along  
12 with Ms. Narez's electronic signature acknowledging  
13 receipt of same on November 23, 2013) (Ex. E); and
- 14 • The new hire orientation video shown to all newly hired  
15 employees which explains the Program and that the  
16 employee can opt out of Step 4 (Ex. F and G).

17 21. Macy's created a descriptive and explanatory Brochure  
18 regarding the Solutions InSTORE Program for dissemination to all  
19 new hires. This Brochure details the Solutions InSTORE Program.  
20 The Brochure uses both graphics (such as charts and tables) and  
21 multiple pages of text to explain each step of the Solutions  
22 InSTORE Program in detail. A true and correct copy of the  
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1 Solutions InSTORE Program Brochure provided to Ms. Narez is  
2 attached as **Exhibit B**.

3 22. The Solutions InSTORE Brochure contains: (1) a summary  
4 of certain provisions from the Plan Document, (2) a complete copy  
5 of the Plan Document, and (3) an opt-out Election Form. The  
6 Brochure emphasizes, among other things, that the arbitration  
7 process is binding, covers most disputes related to the employee's  
8 employment, and is a waiver of the employee's right to a civil  
9 action and jury trial. The Brochure explains that the employee may  
10 opt out of Step 4-Arbitration. Thus, the employee has a choice  
11 about whether to be covered by Step 4-Arbitration. See **Ex. B**.  
12

14 23. Specifically, the Brochure provides:

15 **STEP FOUR: THE DECISION IS YOURS**

16 Your Solutions InSTORE enrollment period will be your  
17 opportunity to decide whether you want to receive all four  
18 steps of this program. You are automatically covered by Step 4  
19 unless you choose to exclude yourself. When covered by Step 4  
20 final and binding arbitration, you and the Company agree to  
21 use arbitration as the sole and exclusive means to resolving  
22 any dispute regarding your employment; we both waive the right  
23 to civil action and a jury trial. If you decide you want to  
24 be excluded from participating in and receiving the benefits  
25 of Step 4, we need you to tell us in writing by completing the  
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1 form enclosed in this brochure and returning it to the Office  
2 of Solutions InSTORE at the address provided within 30 days of  
3 your hire date. In this case, Steps 1-3 will continue to apply  
4 to you -- you will no longer, however, be eligible for the  
5 benefits available under the Step 4: Arbitration process.

6  
7 Choosing to be covered by Step 4 is your decision. We urge  
8 you to read the Plan Document and educate yourself about the  
9 benefits and limitations of arbitration to make an informed  
10 decision that's best for you. There are many sources of  
11 information and opinions about arbitration. One excellent  
12 source of information is the AAA website, which you can access  
13 at www.adr.org.

14  
15 **(Exhibit B, page 10 of the Brochure.)**

16  
17 Moreover, the brochure advises employees that a copy of the  
18 Plan Document is included in the brochure itself, and "can also be  
19 obtained through www.employeeconnection.net, a request to your  
20 local human resources representative, an email sent to  
21 solutions.instore@macys.com or by calling the Office of Solutions  
22 InSTORE at 1-866-285-6689." *Id.*

23  
24 24. If a new hire wishes to opt out of Step 4-Arbitration,  
25 all he or she has to do is complete the opt-out Election Form and  
26 mail it back to the Office of Solutions InSTORE in Ohio within  
27 thirty (30) days of his or her date of hire. A true and correct  
28

1 copy of the opt-out Election Form is attached as **Exhibit C**.  
2 (Exhibit C has the watermark "Exhibit" for purposes of this  
3 declaration only.) The Election Form is inserted in the middle of  
4 the Solutions InSTORE Brochure. The Election Form notifies the  
5 employee of his or her right to opt out of Step 4-Arbitration and  
6 explains that in order to opt out, the employee must complete the  
7 Election Form and mail it back to the Office of Solutions InSTORE  
8 in Ohio. See **Ex. C**.

10 25. The Office of Solutions InSTORE also gives each Macy's  
11 store copies of posters that offer the Solutions InSTORE Program as  
12 a dispute resolution tool and sets forth the hotline number should  
13 an employee need to contact the Solutions InSTORE Office. The  
14 posters are for the stores and facilities to display in an area  
15 frequented by employees. A true and correct (although not to  
16 scale) copy of the poster provided to the stores for display to the  
17 time Ms. Narez was hired is attached as **Exhibit D**.

20 26. Additionally, employees have access to  
21 [www.employeeconnection.net](http://www.employeeconnection.net), which can be accessed by the employee  
22 on any computer with an Internet connection. The website provides  
23 employees with critical information about their employment,  
24 including, among other things, corporate policies/procedures,  
25 benefits, wage information, and work schedules, in addition to  
26 information about the Solutions InSTORE Program. Like the Brochure,  
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1 the Solutions InSTORE website uses both graphics and text to  
2 explain each step of the Solutions InSTORE Program in detail. The  
3 website also provides employees with access to the entire Solutions  
4 InSTORE Plan Document.  
5

6 27. Upon receipt of the Solutions InSTORE brochure, and as  
7 further explained in the Declaration of Ragunathan Veeraraghavan  
8 filed in connection with Defendant's Motion to Compel, the newly  
9 hired employee is required to physically or electronically sign a  
10 "Solutions InSTORE New Hire Acknowledgement." By signing, the  
11 employee acknowledges that he or she has received the Brochure  
12 (which includes a copy of the Plan Document), understands that he  
13 or she has thirty (30) days to decide whether to opt out of Step 4-  
14 Arbitration, and can obtain further information about the program  
15 from a variety of sources, such as the Solutions InSTORE website.  
16 To electronically sign the New Hire Acknowledgment, Ms. Narez was  
17 prompted to enter her own Social Security number, month and day of  
18 birth, and zip code. A true and correct copy of Ms. Narez's  
19 Solutions InSTORE New Hire Acknowledgment and confirmation of her  
20 electronic signature are attached as **Exhibit E**. Portions of  
21 **Exhibit E** have been redacted to remove confidential personal  
22 information.  
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26 28. Also, as part of a new employee's introduction to the  
27 company, Macy's requires that the Solutions InSTORE Program be  
28

1 covered as part of the orientation process. All newly-hired  
2 employees must view an informational video about the Solutions  
3 InSTORE Program as part of their new hire computer-based training.  
4 The employee must enter his or her employee ID number and verify  
5 their first name, last name, division and location to start the  
6 video. Upon conclusion of the video, the employee must check a box  
7 indicating that "I verify that I have viewed the entire Solutions  
8 InSTORE presentation" and again enter his or her employee ID.  
9 After verifying completion of the Solutions InSTORE new hire video,  
10 the employee is recorded as having "completed" the Solutions  
11 InSTORE new hire training video and this fact is reflected in the  
12 employee's training records. A true and correct copy of the video  
13 transcript is attached as **Exhibit F**. A true and correct copy of a  
14 screenshot reflecting the trainings (including Solutions InSTORE)  
15 completed by Ms. Narez is attached as **Exhibit G**.

19 29. I personally reviewed the PeopleSoft Human Resource  
20 database to determine whether Ms. Narez returned an Election Form  
21 within 30 days of her hire on November 23, 2013. According to the  
22 database, Ms. Narez never returned an Election Form. I also  
23 personally reviewed the appropriate areas of the correct file  
24 cabinet (based on Ms. Narez's Social Security number), and there  
25 was no Election Form returned by Ms. Narez.

27 **Ms. Narez Never Challenged Her Inclusion in the Arbitration**  
28

1 Portion of the Solutions InSTORE Program.

2 30. The Office of Solutions InSTORE maintains a toll-free  
3 phone number for employees to use if they have any questions  
4 concerning the Solutions InSTORE Program. In addition, all  
5 employee contacts with the Office of Solutions InSTORE, whether by  
6 phone, voicemail, e-mail, or letter, are tracked and managed in an  
7 online recordkeeping system.  
8

9 31. I reviewed the database to determine whether Ms. Narez  
10 ever contacted the Office of Solutions InSTORE. My review revealed  
11 that Ms. Narez contacted the Office of Solutions InSTORE at least  
12 once about a work related concern but she never challenged her  
13 inclusion in Step 4-Arbitration.  
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1        32. Macy's maintains the attached records in the regular and  
2 ordinary course of its business. All of the attached records were  
3 prepared and compiled by Macy's personnel in the ordinary course of  
4 business at or near the time of the acts, conditions, or events  
5 recorded. Macy's relies on the trustworthiness of these documents  
6 in the discharge of its duties and responsibilities pertaining to  
7 its employee population. The attached exhibits are true and correct  
8 copies of the documents maintained by Macy's.  
9

10        I declare under penalty of perjury under the laws of the state  
11 of California and the United States of America that the foregoing  
12 is true and correct.  
13

14  
15        Executed this 28 day of April, 2016 at Cincinnati, Ohio.  
16

17  
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19        MATTHEW MELODY  
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